IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Ramandeep Singh. Versus State of Rajasthan.

S.B. Criminal Appeal No. 823/2003

and

Kulwant Singh. Versus State of Rajasthan.

S.B. Criminal Appeal No. 783/2003

Both against the judgment and order dated 15-7-2003 passed by the Special Judge, N.D.P.S. Act cases, Hanumangarh, in Sessions Case No. 17/2001.

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Date of Judgment: May 29, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. H.S.S. Kharlia and Mr. S.S. Dhillon, for appellant Ramandeep Singh in Appeal No.823/2003.

Mr. B.S. Rathore, for appellant Kulwant Singh in Appeal No.783/2003.

Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

Both these criminal appeals under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) are directed against the judgment and order dated 15-7-2003 passed by the Special Judge, NDPS Act Cases,

Hanumangarh (for short, "the trial Court" hereinafter) in Criminal Case No. 17/2001, whereby the trial Court convicted both the appellants for the offence under Section 8/15 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act" hereinafter) and sentenced each of them to undergo ten years' rigorous imprisonment and a fine of Rs.1,00,000/-, in default of payment of fine further to undergo six months' rigorous imprisonment. Aggrieved by the judgment and order impugned, convicting and sentencing the appellants, both the appellants have filed the afore-mentioned appeals.

Briefly stated, the facts, to the extent they are relevant and necessary for decision of these two appeals are that on 26-9-2001, PW 1 Ranjit Singh, Station House Officer, Police Station, Rawatsar, along with PW 7 Sant Kumar, PW 8 Babrubhan, Mubarak Ali, Rajendra Singh, Begraj and driver Ravi Darshan, while holding a Nakabandi at 11:45 PM, noticed a Maruti Esteem car coming at a great speed, which was got stopped by giving a signal and was surrounded by PW 6 Ranjit Singh and other members of the police party. Two persons were occupying the car, one was sitting on the driver's seat and the another by his side. Appellant Ramandeep Singh, who was on the driving seat of the car, on being asked, disclosed his name, father's name and the address etc. and the other person sitting by his side disclosed his name as appellant Kulwant Singh.

However, both the appellants, apprehending the action against them, fled away in the nearby fields. They were chased by the police party and appellant Ramandeep Singh was caught-hold; however, appellant Kulwant Singh managed to flee away taking advantage of darkness and the crops standing in the nearby fields and, therefore, appellant Kulwant Singh could not be apprehended. The Maruti Esteem Car No. DL.1-CE-9536, of which the appellants were the occupants, on being searched, was found carrying three bags, each containing 40 kgs of poppy husk. A tarpaulin was spread and the contraband poppy husk of all the three begs were put in it and two samples of 500 grams each were taken. A specimen seal was prepared and the samples and the remaining poppy husk were sealed. After usual investigation, the police filed Challan against both the appellants for the offence under Section 8/15 of the NDPS Act. The charges were framed by the trial Court, to which the appellants denied. The prosecution adduced evidence by producing eleven witnesses and the documents EX.P/1 to EX.P/24. Both the appellants made statements under Section 313 of the Code and denied the allegations. Appellant Ramandeep Singh stated that he, along with one Sanjeev Kumar, came to Rawatsar for searching a shop for Sanjeev Kumar and the police party apprehended him and got his signatures on certain papers. Appellant Kulwant Singh denied the allegation and stated that he

has been wrongly implicated in the case. DW 1 Mittu Singh was produced as a defence witness. The trial Court, on appreciation of the evidence produced by the parties, came to the conclusion that the prosecution has proved the case beyond reasonable doubt against both the appellants and, therefore, both the appellants were convicted and sentenced as noticed-above. Hence these two appeals.

I have heard Mr. H.S.S. Kharlia, learned counsel for appellant Ramandeep Singh and Mr. B.S. Rathore, learned counsel for appellant Kulwant Singh and also heard the learned Public Prosecutor for the State.

It is contended by the learned counsel for appellant Ramandeep Singh that there are contradictions in regard to sealing of the samples and, therefore, according to the learned counsel, the case of the prosecution is doubtful. It was further contended that there is variance in the weight of the samples taken from the appellants and received by the State Forensic Science Laboratory. It was also contended that the prosecution evidence is not consistent to the effect whether appellant Ramandeep Singh was on the driving seat of the car or it was appellant Kulwant Singh and, therefore, according to learned counsel for appellant Ramandeep Singh, the prosecution has failed to prove the exclusive and conscious possession of the contraband poppy husk by appellant Ramandeep Singh. It was

also contended that there are some discrepancies in the time when the car occupied by the appellants was searched by the police party.

Learned counsel for appellant Kulwant Singh contended that appellant Kulwant Singh was not identified by the seizure officer as also by the other police witnesses. Learned counsel submits that even according to the prosecution case, appellant Kulwant Singh, taking advantage of darkness and the crops standing in the nearby fields, fled away and was not apprehended by the police party and, therefore, the prosecution has failed to prove that it was appellant Kulwant Singh who was the co-occupant of the car carrying contraband poppy husk. Learned counsel further submits that it is not the case of the prosecution that appellant Kulwant Singh was previously known to the police officials, i.e. the seizure officer or the other witnesses of the search and seizure and also no test identification parade was carried out and, therefore, according to the learned counsel, the prosecution has failed to prove the case against appellant Kulwant Singh beyond all reasonable doubt in absence of his test identification parade. Learned counsel has relied on a decision of the Hon'ble Supreme Court in Budhsen & Anr. Vs. State of U.P., AIR 1970 SC 1321; and Kanan & ors. Vs. State of Kerala, AIR 1979 SC 1127.

Learned Public Prosecutor appearing for the State

supported the judgment and order impugned and contended that appellant Ramandeep Singh was caught on the spot, found driving Maruti Esteem car transporting three bags of contraband poppy husk each containing 40 kgs. He was arrested on the spot with the car and the contraband poppy husk. Public Prosecutor further contended that there is no violation of any of the mandatory provision of the NDPS Act. He submitted that the prosecution case stands fully proved beyond all reasonable doubt from the statements of PW 6 Ranjit Singh, the SHO and seizure officer, as also the other witnesses to the search and seizure. Public Prosecutor submits that the appellants failed to account for the possession of huge quantity of poppy husk. So far as slight variance in the weight of the samples taken from the appellants and received by the FSL is concerned, it is contended by the learned Public Prosecutor that there is clear evidence that two samples of 500 grams each were taken from the bags containing the poppy husk and the same were placed in the containers and when received by the FSL, the samples were weighed by the FSL including the containers and, therefore, the samples of 500 grams, when received by the FSL, were found weighing 520 grams, including the weight of the containers which is evident from the FSL report EX.P/20 and, therefore, the slight variance in the weight is because of weighing the samples along with the containers. More so, according to the learned

Public Prosecutor, the appellants have not challenged the FSL report EX.P/20 and, therefore, it is not open for the appellants to assail the same at this juncture. So far as identity of appellant Kulwant Singh is concerned, according to the learned Public Prosecutor, on the car being got stopped at the time of holding the Nakabandi, it was appellant Kulwant Singh who disclosed his name, though thereafter taking advantage of darkness and the crops standing in the nearby fields, he fled away. His name was also disclosed by co-accused Ramandeep Singh. Learned Public Prosecutor submits that there is consistent evidence of all the prosecution witnesses regarding search, seizure and sealing of the contraband poppy husk as also depositing the contraband poppy husk, samples etc. to the Malkhana and, therefore, the prosecution has proved the case beyond all reasonable doubt against the appellants.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

PW 6 Ranjit Singh, the then Station House Officer, Police Station, Rawatsar and the seizure officer, stated that on 26-9-2001, he, along with other police officials, held a Nakabandi at 11:45 PM on Rawatsar-Hanumangarh road. At that time, he noticed that ASI Charan Das, along with police party, was guarding a Gypsy vehicle along with one Sanjiv Kumar, an accused in that case. At 11:45 PM, he noticed a car coming from

Rawatsar side at a great speed. The car was got stopped. Two persons were found in the car and they disclosed their names as appellants Ramandeep Singh and Kulwant Singh. He has identified both the appellants in the Court. First they asked the name, father's name and address of appellant Ramandeep Singh and while he was in the process of inquiring about the name and address of appellant Ramandeep Singh, both the appellants pushed him away and started running. Appellant Ramandeep Singh was chased and caught-hold near the place of the occurrence; however, appellant Kulwant Singh could not be apprehended and he fled away. On checking the car, it was found carrying three bags of poppy husk, each containing 40 kgs of poppy husk, totaling 120 kgs. Two samples of 500 grams each were taken. The samples and the remaining contraband poppy husk were seized and sealed on the spot. He has proved the seizure memo EX.P/3 and notice EX.5 apprising appellant Ramandeep Singh about the reason of his arrest. He has also proved the seizure memo of the car bearing No. DL.1CE-9536 as also the Roznamcha report EX.P/11 for their going out of the police station and the return vide EX.P/12. He stated that he handed over the material contraband poppy husk and the samples in the sealed condition to the Malkhana Incharge PW 7 Sant Ram, Head Constable. After search and seizure, FIR EX.P/13 was drawn and Crime Report No. 264/2001 was

registered. He has proved the sample Article 1 marked A, the samples Marked A, the material contraband poppy husk Articles 3, 4 and 5, all the three bags containing the poppy husk. The sample Article 1 marked A, which was sent to FSL, was received back and on opening found Chit EX.P/16 bearing the signatures of appellant Ramandeep Singh as also the signatures of two Motbirs PW 2 Ramrakh and PW 4 Ramesh Kumar. He has proved the sample Article 2, marked B, which was sealed on the spot. In the cross-examination, he stated that there was no prior information regarding the car carrying contraband poppy husk occupied by the appellants. The car was noticed coming while conducting the Nakabandi. A detail of search, seizure and arrest was sent to the Superintendent of Police vide EX.P/9. A notice EX.P/10 purporting to under Section 50 of the NDPS Act was served on appellant Ramandeep Singh apprising him his right to be searched in the presence of the nearest magistrate or a gazetted officer or the seizure officer; however, appellant Ramandeep Singh gave consent for his search by PW 6 Ranjit Singh, the seizure officer, vide EX.P/10.

It appears from the statement of PW 6 Ranjit Singh, the seizure officer, that on the very day, recovery of poppy husk was also effected from a Maruti Gypsy occupied by Sanjiv Kumar, an accused in that case. He stated that all the contraband poppy husk contained in all three bags were mixed

on a tarpaulin and thereafter two samples of 500 grams each were taken and sealed in polythene bags and marked Article A and Article B respectively. The remaining contraband poppy husk was put in the bags, each containing 39 kgs. after taking the samples and the seizure memo EX.P/3 was prepared. Appellant Ramandeep Singh was arrested after apprising him the reason of his arrest vide EX.P/5. A memo of specimen seal EX.P/4 was prepared on the spot, which bears the signatures of appellant Ramandeep Singh and the two Motbirs. The car was seized on the spot. On being asked in the cross-examination as to what was the weight of the polythene bags in which the samples were sealed, he could not disclose the exact weight of the polythene bags which were used as the containers for sending the samples to the FSL. In cross examination, he stated that after getting the car stopped, while he was in the process of asking the name and address of appellant Ramandeep Singh, both the appellants ran away and, therefore, he could not ask appellant Kulwant Singh about his father's name and address. He stated that after the occurrence, he had, for the first time, seen appellant Kulwant Singh at the time of his arrest. However, he admitted that appellant Kulwant Singh was not arrested by him as the arrest memo of appellant Kulwant Singh does not bear his signatures and stated that appellant Kulwant Singh was arrested by the Station House Officer, Police Station, Nohar.

PW 7 Sant Kumar, Head Constable at the relevant time of the occurrence posted at Police Station, Rawatsar, who was also the Incharge of the Malkhana, accompanied PW 6 Ranjit Singh, the seizure officer. He stated that at about 11:45 PM, they noticed a Maruti Esteem car coming from Rawatsar side, which was got stopped by PW 6 Ranjit Singh. Two persons were found sitting in the car. PW 6 Ranjit Singh asked their names and address. One of the persons disclosed his name as Ramandeep Singh and the other as Kuldeep Singh. By breaking the police encircling, both the appellants ran away. They were chased by the police party and appellant Ramandeep Singh was caught-hold; however, appellant Kulwant Singh fled away. He has identified appellant Ramandeep Singh in the Court and stated that it was he who was caught-hold by them on the spot. He has also identified appellant Kulwant Singh as one of the occupants of the said car. He has proved the notice EX.P/10 under Section 50 of the NDPS Act served on appellant Ramandeep Singh. On the saying of PW 6 Ranjit Singh, he went to Rawatsar for bring a weigh-machine etc. Along with him, he also brought two Motbirs Raman Bansal and the Naib Tehsildar. The car was searched in the presence of the two Motbirs after taking their consent to be the Motbirs. In the presence of the Motbirs, the search and seizure were made. On 27-9-2001, two sealed packets marked A and B and two bags containing poppy

husk, containing 40 kgs poppy husk and one bag containing 39 kgs of poppy husk, were deposited with him by PW 6 Ranjit Singh in respect of Crime Case No. 264/2001. He has proved EX.P/17, the Malkhana Register. He further stated that on 3-10-2001, the samples of Crime Report No. 264/2001 were handed over to Jagdish Singh Constable to be carried to the Office of the Superintendent of Police, Sri Ganganagar for getting the forwarding letter prepared and onward to the FSL. Constable Jagdish Singh deposited the sample with the FSL on 4-10-2001 vide receipt EX.P/16, the endorsement of which has been made in EX.P/17, the Malkhana Register. He stated that as long as the material contraband (Mudda-Maal) and the samples remained with him, they remained in the properly sealed condition and the seals on them remained intact. He has proved the copy of the Malkhana Register EX.P/17A. However, he admitted that on EX.P/17 Malkhana Register, the deposit of contraband material (Mudda-Maal) and the samples given to Jagdish Singh for taking to FSL have been written by two different inks. However, he stated that in EX.P/17, Article No.5, the deposit in the sealed packet has been endorsed by him by a different ink.

PW 5 Charan Das and PW 8 Babrubhan Yadav are also the witnesses to the recovery. These witnesses stated that along with PW 6 Ranjit Singh, the seizure officer, they were

holding Nakabandi at 11:45 PM on 26-9-2001 and noticed a Maruti Esteem car coming from Rawatsar, which was being driven at a great speed. The said car was got stopped. Two persons got down from the car, one of them disclosed his name as appellant Ramandeep Singh and the other as appellant Kulwant Singh. Both of them started running. Appellant Ramandeep Singh was apprehended on the spot; however, the other person managed to flee away taking advantage of darkness in the fields. On checking the car, it was found carrying the poppy husk. Both these witnesses have made the similar statement with regard to description and weight of the poppy husk which was searched and seized on the spot.

Apart from these witnesses, the prosecution examined PW 2 Mr. Ramrakh, the Naib Tehsildar. He was requested by the police to conduct search and seizure in his presence being a gazetted officer. He, along with the police Head Constable PW 7 Sant Kumar and PW 4 Ramesh Kumar went to the place where he found one Gypsi and one Maruti Esteem car along with police officials and by the sides of the said Gypsi and the Maruti Esteem car, one person each was standing. A notice was served vide EX.P/2 requiring him to be present at the time of search and seizure and he gave consent thereto. In his presence, the police searched the car, in which three bags of poppy husk were found. By testing, it was found to be poppy

husk. On being asked about the licence or permit, the person standing by the side of the car failed to show any licence or valid permit to possess the poppy husk. A notice EX. P/6 was served to the person standing by the side of the car. He consented his search to be taken in his presence. On search, each bag was found containing poppy husk weighing 40 kgs. The poppy husk contained in all the three bags were put on a tarpaulin and two samples of 500 grams each were taken therefrom. The remaining poppy husk as also the samples were sealed on the spot. The seizure memo EX.P/3 and the specimen seal memo EX.P/4 were prepared on the site. The accused was apprised of the reason of his arrest vide EX.P/5. He has identified appellant Ramandeep Singh in the Court and stated that it was he who was standing by the side of the Esteem car, from which the contraband poppy husk was recovered.

Thus, from the statement of PW 6 Ranjit Singh, the seizure officer, as also PW 2 Mr. Ramrakh, PW 5 Charan Das, PW 7 Sant Kumar and PW 8 Babrubhan Yadav, it has been established beyond reasonable doubt that the appellant and one more person were found transporting contraband poppy husk weighing in all 120 kgs without there being a valid permit or licence. The identity of appellant Ramandeep Singh has been proved beyond reasonable doubt as he was arrested on the spot along with the car and the contraband poppy husk. The

witnesses have identified him in the court as the one who was found driving the car transporting contraband poppy husk.

PW 10 Jagdish Singh, Head Constable, stated that on 3-10-2001, PW 7 Sant Kumar gave him the sample of contraband poppy husk, memo of specimen seal, seizure memo, FIR etc. to be taken to the Office of the Superintendent of Police for getting a forwarding letter prepared and thereafter to take the sample to the State Forensic Science Laboratory, Jaipur. He, along with the contraband sample Marked "A" and other documents, went to the Office of the Superintendent of Police, got the forwarding letter prepared and thereafter came back to the Police Station and on the evening of the very day, he went to FSL, Jaipur. He has proved EX.P/6. He stated that on 4.10.2001, he deposited the sample and the memo of specimen seal to the FSL vide EX.P/21. On return, he deposited EX.P/21 with the Malkhana. His departure and arrival are recorded in EX.P/22 and EX.P/23 and the copies of which are EX.P/22-A and EX.P/23-A. He stated that as long as the contraband sample marked "A" remained with him, it remained properly sealed and the seals thereon remained intact. This fact finds support from the FSL report EX.P/20, wherein it has been mentioned that the packet, one in number marked "A" enclosed within cloth cover which was properly sealed bearing impressions which tallied with the specimen seal impression forwarded and the seals were

intact. The sample of the contraband poppy husk, along with the memo of specimen seal, were sent to the FSL, which on being microchemically examined vide EX.P/20, the extract of the sample contained in the packet marked "A" gave positive tests for the presence of chief constituents of opium, hence the sample was of dried crushed capsule of opium poppy. The FSL report EX.P/20 has not been challenged by the appellants.

Thus, the contention of the learned counsel for appellant Ramandeep Singh that the contraband sample sent to FSL was not properly sealed, has no force in view of the reliable evidence of PW 6 Ranjit Singh, the seizure officer and the other witnesses to the search and seizure including PW 2 Mr. Ramrakh, the Naib Tehsildar, as also the statements of PW 7 Sant Kumar, the Malkhana Incharge and PW 10 Jagdish Singh, who carried the sample and the memo of specimen seal to the FSL. Thus, the samples were properly sealed on the spot by the specimen seal EX.P/4, the memo of specimen seal was deposited with the Malkhana and received by the FSL, which is evident from the FSL report EX.P/20 and the seals on the sample remained intact through-out as stated by the prosecution witnesses noticed above.

So far as variance in the weight of the sample is concerned, two samples of 500 grams each were taken, which were enclosed within a cloth cover and when the sample marked

"A" reached the FSL, it was weighed along with the polythene bag and found 520 grams. The FSL report EX.P/20 clearly shows that the weight 520 grams is along with the polythene bag. If at all there is little variance of 20 grams, it is because of weighing the sample along with the polythene container. In Madan Lal & Anr. Vs. State of Himachal Pradesh, 2003 Cr.L.J. 3868, the Hon'ble Supreme Court held as under:-

> "Coming to the plea that there was reduction in weight of the samples sent for analysis and there was tampering, it has to be noted that this aspect has also been considered by the trial Court which has recorded the reasons for rejecting the same. It has been noted that the seals were intact and there was no tampering. The view has been endorsed by the High Court. On considering the reasoning indicated that there was very minimal and almost ignorable variation in weight, we find no reason to interfere with the findings."

In Pon Adithan Vs. Deputy Director, Narcotics Control Bureau, Madras, 1999 Cri.L.J. 3663, the Hon'ble Supreme Court held that as the samples were prepared in the Court in presence of the Presiding Magistrate and were properly packed and Court seal was applied on them and as the Chemical Analyst had also found the seal intact, there is little room for doubt that the sample which was examianed by the Chemical Analyst was a part of M.O. 3 and in our opinion, the Courts below did not commit any error in holding that what was found from the appellant therein was heroin.

More so, the FSL report EX.P/20 has not been challenged and, therefore, in view of the decision of the Hon'ble Supreme Court in Ashok Kumar Vs. State of Haryana, 2000 SCC (Cri.) 506, the contention raised by the learned counsel for appellant Ramandeep Singh has no force.

So far as Panch witnesses not supported the prosecution case is concerned, PW 2 Mr. Ramrakh, the Naib Tehsildar, is an independent witness and his statement fully finds support from the statements of the seizure officer PW 6 Ranjit Singh and other witnesses to the search and seizure, viz. PW 5 Charan Das, PW 7 Sant Kumar and PW 8 Babrubhan Yadav. In P.P. Fathima Vs. State of Kerala, JT 2003 (8) 527, the Hon'ble Supreme Court held that it has been repeatedly held that the mere fact that a Panch witness does not support the prosecution case by itself would not make the prosecution case any less acceptable if otherwise the Court is satisfied from the material on record and from the evidence of the seizing authority that such seizure was genuinely made. In this view of the matter, the contention regarding Panch witnesses not supporting the prosecution case also deserves to be rejected.

Now, so far as the appeal filed by appellant Kulwant Singh is concerned, it has been argued by the learned counsel that appellant Kulwant Singh was not apprehended on the place of the occurrence and he was not previously known to the

witnesses of the search and seizure. Appellant Kulwant Singh was identified by the witnesses in the trial Court. The occurrence is of dated 26-9-2001 and appellant Kulwant Singh was arrested on 14-5-2002, i.e. after more than seven months vide EX.P/24. During this period, the prosecution witnesses had no occasion to see him. The basis, on which appellant Kulwant Singh was implicated is that the car in question was said to have been purchased by him from its registered owner.

Though PW 6 Ranjit Singh, the seizure officer, stated that when the appellant was arrested by him, he saw him, but when confronted with the arrest memo, he admitted that appellant Kulwant Singh was not arrested by him and it appears from the arrest memo EX.P/24 that appellant Kulwant Singh was arrested by the Station House Officer, Nohar, camp Dabwali at 5:30 PM on 14-5-2002. At that time, PW 6 Ranjit Singh was not the SHO, Police Station, Nohar. The SHO, Police Station, Nohar, who arrested appellant Kulwant Singh, has not been produced. Be that as it may, appellant Kulwant Singh was identified by PW 6 Ranjit Singh for the first time in the Court. Admittedly, after the occurrence of 26-9-2001, when appellant Kulwant Singh was arrested on 14-5-2002, he was not put to test identification parade. In Kanan & ors. Vs. State of Kerala, (supra), the Hon'ble Supreme Court held that where a witness identifies an accused who is not known to him in the Court for the first time,

his evidence is absolutely valueless unless there has been a previous test identification parade to test his powers of observations. The idea of holding test identification parade under Section 9 is to test the veracity of the witness on the question of capability to identify an unknown person whom the witness may have seen only once. If no test identification parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court.

In Budhsen & Anr. Vs. State of U.P. (supra) the Hon'ble Supreme Court held that the facts which establish the identity of an accused person are relevant under Section 9. As a general rule, the substantive evidence of a witness is a statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature, inherently of a weak character. The evidence, in order to carry conviction should ordinarily clarify as to how and under what circumstance he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the

accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when, for example, the Court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona fides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in Court. Identification proceedings in their legal effect amount simply to this that certain persons are brought to jail or some other place and make statements either express or implied that certain individuals whom they point out are persons whom they recognise as having been concerned in the crime.

In Sarwan Singh Vs. State of Punjab, (2003) 1 SCC 240, the Hon'ble Supreme Court held that ordinarily identification of an accused for the first time in Court by a witness should not be relied upon for the purpose of passing the order of conviction without a definite corroboration. Identification for the first time in court cannot possibly be termed to be non-admissible but it is a matter of prudence and jurisprudential requirement that the same should be upon proper

corroboration otherwise the justice delivery system may stand affected.

In Dana Yadav Vs. State of Bihar, (2002) 7 SCC 295, the Hon'ble Supreme Court held that ordinarily, identification of an accused for the first time in Court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in Court.

In the instant case, appellant Kulwant Singh, admittedly, was not known to any of the prosecution witnesses, including PW 6 Ranjit Singh, the seizure officer. It is the case of the prosecution that moment the persons got down from the car, taking advantage of darkness, they fled away in the agricultural fields having standing crops; however, appellant Ramandeep was apprehended but appellant Kulwant Singh could not be

apprehended. Whether in the darkness, a person getting down from the vehicle and taking heels, can be identified by a witness in the Court after a lapse of about 2 ½ years, is highly doubtful. In the instant case, the occurrence is of dated 24-9-2001 and PW 6 Ranjit Singh, the seizure officer, identified appellant Kulwant Singh in the trial Court on 22-1-2003. Keeping in view the decisions of the Hon'ble Supreme Court referred here-in-above, in my view, the prosecution has failed to establish that it was appellant Kulwant Singh, who was the other occupant of the Esteem car No. DL-1CE-9536. The evidence of prosecution witnesses first time identifying appellant Kulwant Singh in the Court after a lapse of 2 ½ years without any corroborative evidence, is not reliable so far as appellant Kulwant Singh is concerned and, therefore, the prosecution has failed to prove the case against appellant Kulwant Singh beyond reasonable doubt and as such, appellant Kulwant Singh is entitled for the benefit of doubt.

In the result, the Appeal No. 823/2003 filed by appellant Ramandeep Singh fails and is hereby dismissed. The judgment and order impugned dated 15-7-2003 passed by the Special Judge, NDPS Cases, Hanumangarh in Sessions Case No. 17/2001, convicting and sentencing appellant Ramandeep Singh for the offence under Section 8/15 of the NDPS Act is affirmed.

However, Appeal No. 783/2003 filed by appellant Kulwant Singh is allowed and the judgment and order impugned dated 15-7-2003 passed by the Special Judge, NDPS Cases, Hanumangarh in Sessions Case No.17/2001, to the extent of convicting and sentencing appellant Kulwant Singh for the offence under Section 8/15 of the NDPS Act, is set-aside. Appellant Kulwant Singh is in jail. He be set at liberty forthwith, if not required in any other case.

(H.R. PANWAR), J.

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